

12-9 HUMAN RIGHTS.

12-9.1 Policy.

It is the policy of the City of Boston to assure that every resident shall have equal access to and benefit from all public services, to protect every resident in the understanding and respect among all residents of the City. It is clear that behavior which denies equal treatment to any of our citizens as a result of their religious creed, race, color, sex, gender identity or expression, age, disability, national origin, ex-offender status, prior psychiatric treatment, sexual orientation, military status, marital status or parental status, or which is sexually or racially harassing undermines civil order and deprives persons of the benefits of a free and open society. Nothing in this ordinance shall be construed as supporting or advocating any partnership, religious view or lifestyle. To the contrary, it is the intention of this ordinance that all persons be treated fairly and equally and it is the expressed intent of this ordinance guarantee to all of our citizens fair and equal treatment under law.

(Ord. 1984 c. 16, c. 17, c. 40; Ord. 2002 c. 9)

12-9.2 Definitions.

As used in this section the following terms shall have the meanings as indicated unless a different meaning clearly appears from the context:

Age shall mean any persons between the ages of forty (40) and sixty-five (65).

Bona fide occupational qualification shall mean a valid consideration of race, color, sex, age, religious creed, disability, national origin, ancestry, sexual orientation, marital status, parental status, ex-offender status, prior psychiatric treatment, military status, or source of income which is a requirement for employment and has been certified as such by the Commission or by the Massachusetts Commission Against Discrimination under Chapter 151B of the Massachusetts general Law.

Bonding transaction shall mean the furnishing of a performance, fiduciary or other form of bond to any person.

Commission shall mean the Human Rights Commission.

Credit transaction shall mean the open or closed end grant, extension, denial or termination of credit to any individual.

Disability shall mean a condition which causes a physical or mental impairment which limits, or is regarded as limiting one or more major life activity.

Educational facility shall mean any person, whether organized for profit or not-for-profit, that holds itself out to the public as providing instruction or training in the arts, sciences, trade or any other area of learning.

Employee shall mean any individual who is engaged to work for or under the direction or control of another for monetary or other valuable consideration, but shall not include any individual employed by her or his parents, spouse or children.

Employer shall mean any individual, partnership, association, corporation, trustees, public charity, foundation, political subdivision, board, department, commission, agency or any other person which engages and controls the services of an individual in the City of Boston in exchange for monetary or other valuable consideration, except that it shall not include any employer with six (6) or less persons in its employ, exclusive of parents, spouse or children, nor does it include a club exclusively social, or a fraternal association or religious organization, incorporated or unincorporated, if such fraternal association or religious organization is not incorporated for profit and if the primary function thereof is religious or fraternal.

Employment agency shall mean and include any person undertaking to procure employees or opportunities to work for potential employees.

Ex-offender status shall mean (i) the condition of having been arrested, detained, or accused of any violation of law which no conviction resulted, or (ii) a final conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbing the peace, or (iii) any conviction of a misdemeanor where the date of such conviction or completion of any period of incarceration resulting therefrom, which ever date is later, occurred five (5) or more years prior to the date of the exercise of any right or privilege under this Chapter, unless such person has been convicted of any offense within five (5) years immediately preceding the exercise of any right or privilege under this Chapter.

Executive Director shall mean the Executive Director of the Boston Human Rights Commission as established by this Chapter.

Gender identity or expression shall mean and include a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression whether or not that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with a person's sex at birth.

Insurance transactions shall mean the sale, grant or other provision of insurance to any person.

Labor organization shall mean any organization which exists and is constituted for the purpose, in whole or part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

Marital status shall mean the actual condition of being or having been married, separated or divorced or the condition of being single.

Military status shall mean the condition of being, or having been in the services of the military.

Parental status shall mean the condition of having minor or disabled children.

Person shall mean and include one or more individuals, partnerships, associations, corporations, agencies, legal representatives, trustees, trustees in bankruptcy and receivers, the City and all political subdivisions, boards and commissions provided, however, "person" shall not be applied to an individual acting in a purely private transaction.

Prior psychiatric treatment shall mean an actual or supposed mental impairment of a person caused by illness, injury, birth, professional treatment or hospitalization.

Public accommodation and service shall mean any place, business, facility or other establishment of whatever kind, or agency, whether owned privately or by a public agency which caters or offers services, facilities or goods to or is intended for the use or convenience of the general public whether for a charge or fee or not. Nothing contained herein shall be construed to include or apply to any place, business, facility or other establishment which is by its nature distinctly private, except that when such establishment caters or offers services to the general public, it shall be deemed a public accommodation during such period.

Respondent shall mean a person against whom a complaint has been filed pursuant to this Chapter.

Sexual orientation shall mean actual or supposed homosexuality, heterosexuality, or bisexuality by orientation or practice, including but not limited to an orientation or practice, including but not limited to an orientation that may be presumed on the basis of mannerisms, physical characteristics, manner of dress or deportment.

Source of income shall mean the manner or means by which an individual supports herself or himself, and his or her dependents, except that in this Chapter it shall not include any criminal activity from which a source of income is derived.

(Ord. 1984 c. 16, c. 17, c. 40; Ord. 2002 c. 9)

12-9.3 Discriminatory Practices Regarding Employment.

It shall be an unlawful practice and thereby deemed a violation of this Chapter for a person directly or indirectly to refuse to hire, employ, classify or upgrade, to bar or to discharge from employment, or otherwise discriminate against any person in the terms, conditions, or privileges of employment, including compensation, because of the race, color, sex, gender identity or expression, age, religious creed, disability, national origin, ancestry, sexual orientation, marital status, parental status, ex-offender status, prior psychiatric treatment, military status or source of income of such individual, unless based upon a bona fide occupational qualification. A person who asserts that a discriminatory employment practice is justified because of a bona fide occupational qualification which has not been certified as such by the Commission or by the Massachusetts Commission Against Discrimination under Chapter 151B of the Massachusetts General Laws shall have the burden of showing that the discrimination is in fact a necessary result of a bona fide occupational qualification and that there exists no less discriminatory means of satisfying the occupational qualification.

It shall further be an unlawful practice and thereby deemed a violation of this Chapter for any employment agency, directly or indirectly, to fail or refuse to classify properly or refer for employment or otherwise discriminate against any person because of the race, color, sex, gender identity or expression, age, religious creed, disability, national origin, ancestry, sexual orientation, marital status, parental status, ex-offender status, prior psychiatric treatment, military status or source of income of such person. An employment agency that specializes in the recruitment and placement of elderly or disabled employees shall be exempt from the operation of this section with respect to such specialized services for the elderly or disabled, provided that such specialized services not discriminate among the elderly or disabled on the basis of other discriminatory criteria.

Nothing herein shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, and which limits membership, enrollment, admission, or participation to members of that religion, from giving preference in hiring or employment to members of the same religion, or employment limited to the elderly or disabled, provided that such employment shall not

discriminate among the elderly or disabled on the basis of other discriminatory criteria.
(Ord. 1984 c. 16; Ord. 2002 c. 9)

12-9.4 Discriminatory Practices Regarding Labor Organizations.

It shall be an unlawful practice and thereby deemed a violation of this Chapter for a labor organization directly or indirectly to refuse to admit to membership, apprenticeship, training or classification or to discriminate otherwise against any individual, absent a bona fide occupational reason or other reasonable cause, because of the race, color, sex, gender identity or expression, age, religious creed, disability, national origin, sexual orientation, marital status, parental status, ex-offender status, prior psychiatric treatment, military status or source of income of such individuals.
(Ord. 1984 c. 16; Ord. 2002 c. 9)

12-9.5 Discriminatory Practices Regarding Credit Transactions, Bonding and Insurance.

It shall be an unlawful practice and thereby deemed a violation of this Chapter for any bank, financial institution, or other credit granting or approving institution or person, including any retail store that sells goods or services on credit, directly or indirectly to discriminate in the granting, reporting, approval or extension of any form of loan or credit to any person because of the race, color, sex, gender identity or expression, age, religious creed, disability, national origin, ancestry, sexual orientation, marital status, parental status, ex-offender status, prior psychiatric treatment, military status or source of income of such person. It shall not be an unlawful discriminatory practice under this subsection to establish or review the creditworthiness of any person by seeking information relevant to such creditworthiness such as amount and source of income, age, employment history, credit references, and the number and age of dependents.

Further it shall be an unlawful practice and thereby deemed a violation of this ordinance for any bonding institution or person engaged in the service of providing financial and performance bonds to refuse to bond any person or discriminate in the terms of bonding any persons because of the race, color, sex, gender identity or expression, age, religious creed, disability, national origin, ancestry, sexual orientation, marital status, parental status, prior psychiatric treatment, military status or source of income of such individual.

Further it shall be an unlawful practice and thereby deemed a violation of this ordinance for any insurance company to refuse to insure any person or discriminate in the terms of insuring any individual because of the race, color, sex, gender identity or expression, age, religious creed, disability, national origin, ancestry, sexual orientation, marital status, parental status, prior psychiatric treatment, military status, ex-offender status or source of income of such person, unless based on a bona fide actuarially determined insurance factor relative to the age or health of the person which affects the risk for which such insurance is being sought.

(Ord. 1984 c. 16; Ord. 2002 c. 9)

12-9.6 Discriminatory Practices Regarding Education.

It shall be unlawful practice and thereby deemed a violation of this Chapter for any educational facility directly or indirectly to fail or refuse to admit, or to curtail or terminate admission to, or to discriminate in the terms or conditions of educational services, opportunities, and curriculum offered to any person, absent a showing of reasonable cause as to why such discrimination may be warranted because

of the race, color, sex, gender identity or expression, age, religious creed, disability, national origin, ancestry, sexual orientation, marital status, prior psychiatric treatment, military status, parental status, ex-offender status or source of income of such person.

The following practices shall be exempt from the operation of this section: the selection of students by a religious educational facility that is limited exclusively or gives preference to members of such religion; the establishment or maintenance by an educational facility of a school or program limited to the members of only one sex or otherwise segregated by sex, consistent however, with Federal and State statutes, the establishment by an education facility of minimum or maximum age requirements for any educational program; and the establishment by an educational facility of special programs designed to assist or provide special training for the disabled, the elderly, individuals who do not speak English, or the economically impoverished.
(Ord. 1984 c. 16; Ord. 2002 c. 9)

12-9.7 Discriminatory Practices Regarding Public Accommodations and Services.

It shall be an unlawful practice and thereby deemed a violation of this Chapter for any person that owns, leases, rents, operates, manages, or in any manner controls a public accommodation directly or indirectly, or who provides a public service, to withhold, deny, curtail or in any manner limit or discriminate with respect to the full use of such public accommodation or service because of the race, color, sex, gender identity or expression, age, religious creed, disability, national origin or ancestry, sexual orientation, marital status, parental status, prior psychiatric treatment, military status, ex-offender status or source of income of such individual, unless such public accommodation or service specifically designated for the exclusive use of the elderly or disabled, provided, however, nothing contained herein shall permit the use of restrooms, baths, showers, dressing rooms, or other private accommodations which are separated by sex to be used to by the opposite sex, except it shall be an unlawful and discriminatory practice to prevent or prohibit the use of restrooms, baths, showers, dressing rooms, or other private accommodations based on the gender identity publicly and exclusively expressed or asserted by the person seeking to use such restrooms, baths, showers, dressing rooms, or other private accommodations.

(Ord. 1984 C 16, c. 30; Ord. 2002 c. 9)

12-9.8 Other Unlawful Practices.

It shall be an unlawful practice and thereby deemed a violation of this Chapter for any person to discriminate against any individual because he or she opposed any practice made unlawful by this Chapter, or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Chapter.

It shall be an unlawful practice and thereby deemed a violation of this Chapter for any person to aid or abet another in the violation of any provision of this Chapter.

It shall be an unlawful practice and thereby deemed a violation of this chapter to cause or attempt to cause any person to discriminate against an individual in violation of this Chapter.

(Ord. 1984 c. 16)

12-9.9 Establishment of the Boston Human Rights Commission, Executive Director, Staff.

There shall be in the City a Commission known as the Boston Human Rights Commission, hereinafter referred to as the Commission. The Commission shall be comprised of seven (7) members, to be known as Commissioners, each appointed by the Mayor. The Commissioners shall each serve a term of three (3) years, provided, however, that of the members first appointed to the Commission, three (3) shall be appointed for a term of one year, two (2) shall be appointed for a term of two (2) years and two (2) shall be appointed for a term of three (3) years. Thereafter the Mayor shall appoint each successor to a term of three (3) years. Any vacancy occurring otherwise than by expiration of term shall be filled by appointment by the Mayor for the unexpired term.

The Mayor shall appoint annually a Commissioner as the Chairperson of the Commission. Four (4) Commissioners shall constitute a quorum for the purposes of conducting the business of the Commission. Four (4) votes shall be required to pass any Commission decision.

The Commissioners shall be subject to the residency and voting requirements appearing in the City of Boston Code, Ord. Subsection 5-5.2, notwithstanding the exception contained therein. The Commissioners shall be classified special municipal employees for the purposes of Chapter 268A of the General Laws. The Commissioners shall serve without compensation, but each Commissioner shall be entitled to his or her reasonable expenses actually and necessarily incurred in the performance of her or his duties as Commissioner. These expenditures shall be paid from the budget of the Commission. The Commission staff shall consist of an Executive Director, and such personnel as the Commission, upon recommendation of the Executive Director, may deem expedient subject to appropriation.

The Executive Director shall be appointed by and serve at the pleasure of the Mayor. The Mayor shall determine the rate of compensation for the Executive Director.

(Ord. 1984 c. 16, c. 17)

12-9.10 Powers and Duties of Executive Director.

The Executive Director shall have the powers of a department head except for those powers explicitly conveyed to the Commission by this Chapter and shall be responsible for carrying out the policies and decisions of the Commission.

The Executive Director shall have the power and duty to make investigations of discriminatory practices which appear to be in violation of this Chapter and to file complaints with the Commission based upon findings of fact, and conclusions of law only, where there is a probable cause that a violation of this Chapter has occurred. The Executive Director shall be required to appear quarterly before the City Council to give a report of the Commission's activities and to answer questions of the Council. The Executive Director shall have the power to attempt to mediate or conciliate any complaint of alleged discrimination under this ordinance where there is probable cause for such complaint. The Executive Director shall further file, on conforming forms, all complaints with the Massachusetts Commission Against Discrimination and the Equal Employment Opportunity Commission where such complaints relate to discrimination under the jurisdiction of the MCAD and/or the EEOC. The Executive Director shall fix the compensation of the Commission staff within the budgetary limits of the Commission after appropriation by the City Council. (Ord. 1984 c. 16)

12-9.11 Powers and Duties of the Commission.

The Commission shall study the problems of discrimination in the City and shall make such recommendations to the Mayor and the City Council, as in its judgment will effectuate the policy of this Chapter.

The Commission may, on its own behalf, issue a complaint, upon a reasonable belief that a person has engaged in an unlawful discriminatory practice.

The Commission shall have the power to conduct hearings, subpoena witnesses, compel their attendance, including but not limited to filing contempt proceedings with Superior Court, administer oaths, take the testimony of any person under oath and in connection therewith to require the production for examination of any documents, books, papers, or evidence relating to any matter in question or under investigation by the Commission. The Commission may delegate any of its hearing powers to individual Commissioners or members of the Commission staff. Subpoena power shall be exercised by the Chairperson of the Commission, or his or her designee, upon majority vote of the Commission. At any hearing before the Commission, or any committee thereof, a witness shall have the right to be represented by counsel.

The Commission shall have the power to issue publications, results of investigations and research as, in its judgment, will promote good will and minimize or eliminate prejudice, intolerance, bigotry or discrimination and disorder occasioned thereby.

The Commission shall, upon the Executive Director's failure to conciliate a complaint, submit a written report of its findings and recommendations to the Mayor with copies of this report filed with the City Council, the Corporation Counsel, the Massachusetts Commission Against Discrimination (on matters within its jurisdiction), and to any other governmental agency or court having jurisdiction.

Further, the Commission has the power to adopt rules and regulations which it deems necessary to the function of the Commission, provided, however, that all such rules and regulations shall, for a thirty (30) day period following their adoption by the Commission, be held for review and comment by the City Council in an open public hearing, and may be referred to the Corporation Counsel by a vote of a majority of members of the City Council for a ruling on the appropriateness of such rules or regulations. The Commission may recommend to the Mayor and or the City Council additional legislation to aid in the carrying out of the purposes of this Chapter.

(Ord. 1984 c. 16, c. 17, c. 18)

12-9.12 Procedures.

Any person claiming to be aggrieved by an alleged discriminatory practice under this ordinance or claiming to represent an aggrieved person, may, by her or himself or her or his attorney, file with the Commission a verified written complaint. The Complaint shall state the name and address of the person alleged to have committed the discriminatory practice and shall set forth in detail the particular circumstances. The complaint shall be amended to include additional information as required by the Commission. No complaint shall be considered unless it is filed with the Commission within one hundred eighty (180) days after the occurrence of the alleged discriminatory practice, or unless it has been referred to the Commission by the Massachusetts Commission Against Discrimination or the Equal Employment Opportunity Commission after having been timely filed with either and or both agencies.

The Executive Director shall forthwith transmit a copy of the complaint to the respondent by hand or by certified mail return receipt requested.

The Commission shall not accept a complaint from any person who has filed a complaint with the Massachusetts Commission Against Discrimination with respect to the same grievance unless requested by the Massachusetts Commission Against Discrimination to do so.

Upon receipt of a duly filed complaint, the Executive Director shall cause a prompt investigation to be made in connection therewith. After completing the investigation, the Executive Director shall file a written report containing a recommendation concerning the disposition of the matter with the Commission.

Under no circumstances may a report reflect bias where a respondent has exercised his or her constitutional rights relative to providing testimony which may tend to incriminate one's self. Neither may the Commission proceed with a complaint unless there is sufficient probable cause that a violation exists, such probable cause being based on evidence which will stand the test of court scrutiny as to its merit and substance. If after a review of a complaint the Commission finds that no probable cause exists for crediting the allegations of the complaint, the Commission shall order the Executive Director to issue and transmit to complainant and the respondent, by hand or certified mail, return receipt requested, an order dismissing the allegations. The Executive Director on behalf of the Commission shall also issue a notice to both complainant and respondent a copy of federal and state laws governing legal actions one may pursue relative to frivolous actions. If the Commission shall determine after such investigation or review that probable cause exists for crediting the allegations of the complaint, the Commission shall order the Executive Director to immediately endeavor to eliminate the discriminatory practice complained of through persuasion, conciliation and negotiation. Nothing said or done during and as part of such conciliation efforts shall be made public or used as evidence in subsequent proceedings unless each of the interested parties agree thereto in writing. If conciliation succeeds, the terms of the conciliation agreement shall be reduced to writing and signed by or on behalf of the parties and the Commission. Conciliation agreements may be made public, but such public disclosure shall not reveal the identities of the parties involved, except with the agreement of all respondents.

In case of failure to reach a conciliation agreement to eliminate a discriminatory practice within thirty (30) days after a determination of probable cause, or in advance thereof if the Commission believes the circumstances so warrant, or if probable cause exists that a conciliation agreement has been violated, the Executive Director shall cause to be issued and served in the name of the Commission, a written notice together with a copy of such complaint, as the same may have been amended, requiring the respondent to answer the charges of such complaint at a hearing before the Commission, at a time and place to be specified in such notice. The respondent may file in person or otherwise a verified written answer to the complaint and appear at such a hearing in person, with or without counsel.

The Executive Director or his or her designee shall present evidence at the hearing. The Commission shall not be bound by the strict rules of evidence prevailing in courts of law. The testimony, however, shall be under oath and shall be recorded upon the request of either party. Each party respondent may appear at such hearing in person or by a duly authorized representative. Each party may present testimony and evidence.

Each party shall have the right to cross-examine adverse witnesses.

If upon all the evidence, the Commission finds that a respondent has not engaged in any such discriminatory practice or violation of a conciliation agreement, the Commission shall issue and transmit to the complainant and the respondent, by hand or by certified mail return receipt requested, an order dismissing that complaint as to such respondent.

If, upon all the evidence presented at the hearing, the Commission determines that a respondent has engaged in any discriminatory practice as defined in this ordinance or has violated a conciliation agreement, the Commission shall issue an order stating its findings of fact and order for resolving the complaint.

The Commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder.

If a finding is made that a respondent has engaged in a discriminatory practice or violated a conciliation agreement, the Commission shall make a written report of its findings and recommendations to the Mayor and the City Council, with a copy to the Corporation Counsel, on any matter within his or her jurisdiction for review and implementation or to the Massachusetts Commission Against Discrimination on any matter in question, and in all cases, urging and using its best efforts to bring about compliance with the Commission's order. In the conduct of any mediation, investigation, hearing, or representation of any conciliation, complaint, the Commission may call upon not only the members and staff of the Commission, but to the extent practicable, any City department or agency.

If a finding is made that a respondent, who has engaged in a discriminatory practice or violation of a conciliation agreement, is a City contractor or subcontractor performing under municipally funded or assisted contracts, the Mayor shall cause said contracts or subcontracts to be immediately reviewed, and may suspend or revoke said contracts or subcontracts, or otherwise employ all available means to bring the contractor or subcontractor into immediate compliance.

If a finding is made that a respondent, who has engaged in a discriminatory practice or violation of a conciliation agreement, is a licensee, who has obtained a license to operate from the City of Boston or agency thereof, the Mayor shall cause said license to be immediately reviewed, and may suspend or revoke said license, or otherwise employ all available means to bring the licensee into immediate compliance.

Any person aggrieved by a finding of the Commission is entitled to reconsideration upon written summary and transcripts by the full Commission. Written request for such rehearing must be filed with the Commission within seven (7) days of receipt of the Commission's written report. Upon receipt of a request for reconsideration the Commission shall notify all interested parties who shall have seven (7) days to submit any documents, reports or summaries to the Commission. The full Commission shall meet in executive session to review the complaint, summaries, written reports, transcripts, documents or other material, within sixty (60) days of the receipt of the request for reconsideration.

A certified copy of any report, finding or order of the Commission may be admitted as evidence in any court of competent jurisdiction.

Nothing herein shall in any way violate open hearing laws of the Commonwealth of Massachusetts or the Federal Freedom of Information Act.

(Ord. 1984 c. 16, c. 17)

12-9.13 Construction of Ordinance.

The provisions of this ordinance shall be construed for the accomplishment of the purposes hereof. Nothing herein shall be construed to limit civil rights granted or hereinafter afforded by the laws of the United States Government or of the Commonwealth.

(Ord. 1984 c. 16)

**12-9.14 Effect of State and Federal Laws.**

Nothing in this ordinance shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of the Commonwealth of Massachusetts or the United States, other than any such law which purports to require or permit the doing of any act which would be unlawful under this ordinance.

Any remedies provided by this ordinance shall be cumulative with any other remedies provided by State or Federal law.

(Ord. 1984 c. 16)

**12-9.15 Severability.**

If any provision or section of this Chapter shall be held to be invalid by a court of competent jurisdiction, then such provision or section be considered separately and apart from the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

(Ord. 1984 c. 16)